



## DISPUTE ON LAND STATUS IN THE TRANSMIGRATION VILLAGE AREA IN AND AROUND THE FOREST AREA IN PURWOTANI VILLAGE LAMPUNG SELATAN

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### **Abstract**

*One of the objectives of transmigration is to move people from one area to another in the context of population distribution and development. Transmigration participants will be given residential land and business land. The promised land for business often needs to be clarified or still has the status of forest land. Transmigrants are still facing the problem of obtaining business land so horizontal and vertical land disputes are often found in the province of Lampung. This study aims: first, to analyze government policies in resolving land status disputes in transmigration villages in Lampung Province. The type of research used is normative empirical with a statutory approach. Legal materials required by legislation, documents, and library materials. The data obtained were analyzed using qualitative methods. The results of the study show that the Government's Policy in Settlement of Transmigration Village Land Status Disputes in Lampung Province, especially in the Purwotani village area which is included in Register 40 Gedongwani is carried out through a community empowerment program in the form of a social forestry program which is in line with Presidential Regulation 88 of 2017 concerning the Settlement of Land Tenure in Forest Areas. The legal implication is that transmigrants do not get land ownership rights as business land but only use forest land (social forestry). It is recommended to the government considering that transmigrants control land business first then the determination of the Gedongwani Register 40 forest area, the government should release the forest area by changing the forest area boundaries and give it to transmigrants with land ownership rights, and not limited to social forestry.*

**Keywords:** Dispute resolution, Land Use, Transmigration

### **A. Introduction**

Reflecting on the history of the Indonesian government until now, periodically through agencies related to transmigration, the government continues to organize transmigration. <sup>1</sup>The transmigration policy also has a legal basis, namely Law No. 15 of 1997 concerning Transmigration which was later changed to Law No. 29 of 2009. Based on this law, transmigration is divided into general transmigration and voluntary transmigration. Participants of the two types of transmigration are entitled to receive assistance from the government,

<sup>1</sup> Legiani, Wika Hardika, Ria Yunita Lestari, and Haryono Haryono. "Transmigrasi dan Pembangunan di Indonesia." *Hermeneutika: Jurnal Hermeneutika* 4.1 (2018): hlm. 28.

including residential land, houses with ownership rights and business land with ownership rights or other rights according to business patterns.<sup>2</sup> If we take the point of view of transmigration participants, the government is considered clear and clean in obtaining land ownership rights (land) to be given to them.<sup>3</sup> With this, transmigration participants can fully utilize the rights granted by the state and develop transmigration settlements into existing, advanced, and independent villages.

Article 8 paragraph (3) letter b of the 2014 Village Law describes that a legal community unit in a village consists of a certain number of residents. The existence of the area where the villagers live is described in a village map. In villages originating from the transmigration area, we can find the village map in the Transmigration Area Plan (RKT) document as stipulated in Government Regulation No. 3 of 2014 concerning implementing the Transmigration Law. It is hoped that the RKT map document will become the basis for coordinating tools for all policymakers in the implementation of transmigration, especially regarding the regional unit of the transmigration area which will later become the area of the transmigration village. Village maps are important for legal certainty over village territories and land rights that each transmigration participant receives and to be able to describe regional and spatial earthly phenomena.<sup>4</sup> The final result of the village map is in the form of a district head's regulation regarding the affirmation and determination of village boundaries. Not only through village maps, the village's existence also needs to be acknowledged by neighboring villages. One way is by having village boundary signs that match the village map.

Village boundaries based on Minister of Home Affairs Regulation Number 45 of 2016 concerning Guidelines for Determining and Affirming Village Boundaries (Permendagri 45/2016) are the boundaries of government administration areas between villages which can be in the form of natural signs such as igir/mountain ridges/mountains, then river medians and elements made in the field which is described in the form of a map.

Land disputes have various typologies, Hasim Purba classifies them into three general forms, namely: vertical disputes, namely between the community and the community; horizontal disputes related to the community and the government; and horizontal-vertical disputes, namely between the community and entrepreneurs where the government backs up the entrepreneur. Several legal and non-legal factors cause land disputes. Legal factors, for example, overlapping regulations and judiciary.<sup>5</sup> Non-legal factors include overlapping land use, high land prices, increasing public awareness of land as a valuable asset, increasing population in certain areas, and poverty. The unclear boundaries of transmigration villages can also be a factor in land disputes. Based on a 2019 news article, there are 25,863 villages in Indonesia whose territories are in and around forest areas. In addition, around 0.6 million hectares of transmigration land had not been certified in 2014 and only 7.86% had been realized until January 2019.<sup>6</sup>

The fact is that the realization of transmigration land that is clear and clean is progressing very slowly. There is administrative and procedural disharmony between the Ministry of Manpower and Transmigration of the Republic of Indonesia and the National Land Agency (BPN) in implementing the SKB Two Ministers No. KEP.271/MEN/XII/2008 and 10-SKB-BPN RI-2008 concerning Certification of Management Rights and Transmigration Land Rights. ATR/BPN works at the beginning (issuing Land Management Rights/HPL) and end

<sup>2</sup> Maizar, Spynozza, and Bakti Bakti. "Sengketa Lahan Antara Transmigran Dan Penduduk Setempat." *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan* 2.1 (2018): hlm 165.

<sup>3</sup> Prihatin, Rohani Budi. "Revitalisasi program transmigrasi." *Aspirasi: Jurnal Masalah-masalah Sosial* 4.1 (2013): hlm. 60

<sup>4</sup> Fisko, "Pentingnya Peta Desa", *Bhumi: Jurnal Agraria dan Pertanian* 1 No. 1, (2015). Hlm. 2.

<sup>5</sup> Hasim Purba, "Reformasi Agraria dan Tanah untuk Rakyat: Sengketa Petani VS Perkebunan", *Jurnal Law Review*, V. X No 2. UPH, (2010), hlm 167.

<sup>6</sup> mediaindonesia.com," KLHK Identifikasi Ribuan Desa di Kawasan Hutan, November, 9, 2022. <https://mediaindonesia.com/humaniora/221945/klhk-identifikasi-ribuan-desadi-kawasan-hutan>

(issuing title certificates). In the middle, the transmigration department was ready with documents on transmigration objects and subjects such as maps of transmigration areas and lists of participants. But unfortunately the minimal availability of important data makes it difficult to complete the issuance of title certificates. The effect of the slow progress of issuing title certificates in village areas has resulted in the emergence of many cases of land disputes, especially in transmigration villages. The author takes a concrete example in Purwotani Village, Jati Agung District, South Lampung Regency. In 2012, the Head of the Lampung Provincial Forestry Service claimed that the transmigration land that had been occupied since 1986 was a permanent production forest area. Another concrete example is in Sapto Renggo Village, Bahuga District, Way Kanan where the transmigrant business land was claimed by a company based on a Cultivation Right (HGU) certificate.

Some of the examples previously mentioned require dispute resolution which does not only involve the parties to the dispute but also transmigration policy implementers. Referring to Article 4 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases (Permen ART/BPN 11/2016) settlement of land disputes can also be carried out through the initiative of the Minister, where the Minister carries out his duties to monitor and Know the Disputes and Conflicts that occur in a particular area. After going through several processes, the Head of the Land Office reports the monitoring results to the Head of the Regional Office of BPN once every four months and copies it to the Minister.<sup>7</sup> Where the monitoring results need to be followed up. The Minister or the Head of the BPN Regional Office instructs the Head of the Land Office to resolve disputes and conflicts.<sup>8</sup> Apart from that, Permen ART/BPN 21/2020 concerning Handling and Settlement of Land Cases also regulates the handling of disputes and conflicts through several stages, starting from case studies, initial degrees, research, exposure of research results, coordination meetings, final titles, and case settlement.<sup>9</sup>

The formulation of the problem in writing this article is what is the government's policy in resolving disputes over the status of transmigration village land in and or around forest areas in Purwotani Village. What are the legal implications of land tenure for residents of Purwotani Village?

The research method for writing this article is empirical normative with a statutory approach. Legal materials required by legislation, documents, and library materials. The data obtained were analyzed using qualitative methods.

## **B. Discussion**

### **1. Government Policy in Settlement of Land Status Dispute in Purwotani Village**

Government policy in resolving transmigration village land disputes involves at least five agencies, namely: the Ministry in Charge of Transmigration; the ministry in Charge of forestry if the location of the land dispute is in a forest area; the ministry in Charge of land if the disputed location is not a forest area; provincial regional government and district/city regional government; and village government. In resolving land disputes, it is necessary to coordinate between agencies and pay attention to the condition, situation, and status of the land. If it has the status of a forest area, the settlement refers to Presidential Decree No. 88 of 2017 concerning Settlement of Land Tenure in Forest Areas and Perpres No. 86 of 2018 concerning Agrarian Reform. Regulation of the Minister of Environment and Forestry No. P.83/MENLHK/SETJEN/KUM.1/10/2016 concerning Social Forestry which has been replaced by Minister of Environment and Forestry Regulation No. P.11/MENLHK/SETJEN/KUM.1/5/2020

<sup>7</sup> Dispute and conflict resolution is carried out based on: a) initiatives from ministries, or b) public complaints

<sup>8</sup> Articles 4 and 6 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases

<sup>9</sup> Article 6 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases

Concerning Community Plantation Forests. Finally, Minister of Environment and Forestry Regulation No. 9 of 2021 concerning Social Forestry Management as the implementation of Article 247 PP 23/2001 concerning Forestry Administration.

If the status of the land is outside the forest area, then the settlement refers to the Head of BPN Regulation No. 3 of 2011 concerning the Management of the Study and Handling of Land Cases which has been replaced by Permen ART/BPN 11/2016 concerning Settlement of Land Cases and finally with Minister of Art/BPN 21/2020 concerning Handling and Settlement of Land Cases.

#### **a. Government Policy in Land Dispute Resolution**

The dispute over the status of the land in the transmigration village area cannot be separated from how the transmigration participants have not been able to achieve their transmigration goals. There are at least two objectives of organizing transmigration, namely benefits and legal certainty. Land disputes generally arise due to several factors, such as: a) The regulations are incomplete; b) Low regulatory synchronization; c) Insensitivity of land officials to the need and availability of land; d) Inaccurate and incomplete data; e) Human resource capacity is still limited in resolving issues related to land disputes; f) wrong land transactions often occur; g) As well as the existence of overlapping authorities between agencies that both resolve disputes.<sup>10</sup>

Part of the government's authority regarding land dispute resolution is exercised by the regency or city government as stipulated in Presidential Decree No. 34 of 2003 concerning National Policy in the Land Sector. These powers are: a) location permits, b) implementation of land acquisition for the purpose of development, c) arable land disputes, d) compensation and compensation for land for development, e) determination of subject and object of land redistribution, as well as compensation for maximum excess and absentee land, f) stipulation and settlement of customary land; g) use of vacant land, h) permit to open land, i) planning and use of land in the regency or city area. This authority is cross-district or city within the province, which is carried out by the provincial government.<sup>11</sup> Therefore, Lampung Province formed Team 13 or the Land Claim Completion Team.<sup>12</sup>

Settlement of conflicts or land disputes can be carried out through several stages, including: (1) Free trial. The resolution of this dispute can be reached by the parties by submitting a written claim to the local court. (2) Out-of-court or non-litigation pathways which are dispute settlements with a familial character that prioritize deliberation. In fact, non-litigation settlements are often the main choice taken or carried out to resolve issues related to land disputes. Settlements that are carried out outside the court basically tend to be easier and faster, besides that they don't cost as much as the court route.<sup>13</sup> As for the resolution of non-litigation disputes by deliberation for consensus, by appointing community leaders and mediators. It can also be through institutions through related offices or teams 13.

Government policy in carrying out agrarian reform related to transmigration land is regulated in Presidential Decree no. 86 of 2018 concerning Agrarian Reform through two stages, namely: structuring assets and structuring access. The arrangement of the assets itself is the basis for the arrangement of access. Asset management consists of land distribution and asset legalization. The object of asset legalization consists of transmigration land that has not been certified and land owned by the community. Transmigration land that is not yet certified

<sup>10</sup> Maria S.W Sumardjono, *Mediasi Sengketa tanah Potensi Penrapan Alternatif Penyelesaian Sengketa (ADR) di Bidang Pertanahan*, Jakarta:Kompas gramedia, (2008), hlm. 38.

<sup>11</sup> Article 2 Presidential Decree Number 34 of 2003 About National Policy in the Land Sector

<sup>12</sup>FX, Sumarja, et al. "Evaluation of Indonesian Transmigration Law According to Land Certification for Transmigrants." *Journal of Law, Policy and Globalization*. Hlm. 55-56.

<sup>13</sup> Fingli A. Wowor, "Fungsi Badan Pertanahan Nasional Terhadap Penyelesaian Sengketa Tanah", *Lex Privatum 2* ,No. 2,(2014): 95-104, hlm.97.

must meet several criteria such as, the land is not included in the forest area and has been granted management rights to the agency in charge of transmigration. The objects of legalization of assets that have been determined are given to the subjects of agrarian reform through two mechanisms, namely: transmigration land certification and community-owned land certification.<sup>14</sup>

Settlement of land disputes is regulated in the Decree of the Head of BPN No. 34 of 2007 concerning Technical Instructions for Handling and Settlement of Land Problems.<sup>15</sup> The arrangements start from the management of complaints reception counters, through the system for organizing verbal complaint portals and written/letter complaints. It was continued with the holding of case titles, namely presentation activities to analyze and explore in a systematic, comprehensive, then integrated and objective manner related to land issues. The next stage is handling and solving in a team discussion to reach a conclusion. In addition, there are technical procedures for handling cases in court as well as follow-up to the implementation of court decisions.

Regional government (Pemda) authority regarding land based on Law no. 23 of 2014 concerning Regional Government, are: 1. Granting related to location permits across regencies or cities within provincial territories, 2. Determination of locations in land acquisition for the purpose of public interest, 3. Settlement of disputes related to arable land within inter-regencies or cities within provincial territories, 4. Settlement of land compensation or compensation for development by the provincial government, 5. Determination of subjects and objects related to land redistribution, 6. Determination of ulayat lands whose locations are across regencies or cities within provincial territory 7. Settlement of vacant land, including inventory and utilization of vacant land which are located across regencies or cities within a province's territory. 8. Land use planning that spans across regencies or cities within a province's territory.

Taking into account the regional government's authority in the land sector, it turns out that none of it is related to land authority in forest areas, so that the local government does not have a policy to settle land disputes in forest areas. The authority in the forestry sector is only owned by the provincial government, especially in the field of implementing provincial forestry counseling and community empowerment in the forestry sector.

Taking into account the regional government's authority in the forestry sector, the regional government can develop a plan for community empowerment in the forestry sector, including conducting counseling to residents living around the forest about the importance of forest functions. In this context, communities living in forest areas and those around forest areas can benefit from forest land without reducing the function of forests through social forestry activities. Communities do not get land rights but are given forest utilization permits.

#### **b. Government Policy in Settlement of Land Disputes in Purwatani Village**

The government determines and maintains the area of forest areas to realize the optimization of forest benefits. The forest area in Lampung has been degraded by more than 60%. Out of a total of 1,004,735 hectares of forest area, only 329,235 hectares of forest cover remain (both primary, secondary and plantation forests).

Forest management is planned to be in the form of a Forest Management Unit (KPH), namely a forest management area whose main function and designation can be managed properly and sustainably. This refers to the Decree of the Minister of Forestry No. SK427/Menhut-II/2011 dated 27 July 2011 concerning Designation of the Gedong Wani Model Production Forest Management Unit (KPHP) Area with an area of ± 30,243 Ha. KPH is designed according to the function of the forest, meanwhile in Article 6 paragraph (1) of Law

<sup>14</sup> Article 5, 6 Paragraph 1, and Article 13 Presidential Regulation Number 86 of 2018 Concerning Agrarian Reform

<sup>15</sup> Decree of the Head of the National Land Agency Number 34 of 2007 concerning Technical Guidelines for Handling and Settlement of Land Problems

no. 41 of 1999 stated that forests have conservation, protection and production functions. Therefore, existing FMUs must follow the rules: Conservation Forest Management Unit (KPHK), Protected Forest Management Unit (KPHL), and Production Forest Management Unit (KPHP).

In order to reduce forest degradation, the Provincial Government of Lampung through the Forestry Service has proposed that all of its forest areas be turned into site-level management units. Where the proposal was responded to by the Minister of Forestry by issuing Decree No. 68/Menhut-II/2010, that the forest area in Lampung is divided into 16 KPH areas, namely: nine KPHP units and seven KPHL units.

KPH as a site-level management unit should be staffed with competent personnel according to needs. The head of the FMU has the responsibility for carrying out the forest administration, then carrying out the preparation of a forest management plan. The FMU head must: (a) describe national, provincial, and district or city policies to be implemented; (b) then carry out activities in terms of forest management; (c) carry out monitoring and evaluation of the implementation of forest management activities; and (d) open investment to support the achievement of objectives of forest management.

UPTD KPH Gedong Wani, in independent forest management, must; a. Able to generate economic value from the results of forest utilization activities while still paying attention to the conservation, protection, and social functions of the forest so that its sustainability is maintained; b. Able to develop investment and create jobs; c. Have competence in preparation related to spatial-based planning and monitoring; d. Have competence in terms of protecting forest interests, e. Able to analyze the impact of forest management locally, nationally, and globally; f. based on forestry professionalism.

The goal of preparing the Long Term Forest Management Plan is the availability of management planning documents for the Gedong Wani KPHP within 10 years (2014-2023). The planning document covers the entire existing production forest area of  $\pm$  30,243 ha. That number is the entire Register 5, 35, 37, and 40. The scope of the RPHJP, UPTD KPH Gedong Wani includes all elements related to forest management that can guarantee sustainable forest activities. Broadly speaking, the scope is loaded into four programs in parallel and simultaneously, including a. Consolidation of Forest Areas; b. Local Community Empowerment; c. Protection and preservation of Forests and Nature Conservation; and D. Institutional Strengthening and Organizational Capacity of KPHP.

**Table 2. List of Villages included in the Gedong Wani Register Forest area**

| No. | Subdistrict    | Regency       | Village   | Amount |
|-----|----------------|---------------|---|--------|
| 1.  | Crab           | South Lampung | Tanjung Ratu and Tran Tanjungan; Neglasari; Great Cape; cape;                   | 5      |
| 2.  | Merbau Mataram | South Lampung | Sinar Karyadan; Javanese Gutters; Tri Harjo; Single Five;                       | 5      |
| 3.  | Cape Star      | South Lampung | Sri Katon; New Teak; and Sinar Ogan; Beautiful Teak; Budi Lestari; Tri Mulyo.   | 6      |
| 4.  | Cape Sari      | South Lampung | Malangsari; Purwodadi Dalam; and Wonodadi; Kertosari; Sido Mukti; Mulyosari.    | 6      |
| 5.  | Great Teak     | South Lampung | Purwotani; Source Jaya; and Margo Lestari; Rejo Reef; Sido Harjo; Fortune Rays. | 6      |
| 6.  | Natar          | South Lampung | peace   | 1      |

|                    |                 |              |   |    |
|--------------------|-----------------|--------------|---|----|
| 7.                 | village         | East Lampung | Mukti's work; and Mekar Mukti;<br>Bloom Mulyo | 3  |
| 8.                 | Clan Three      | East Lampung | Trisinear                                     | 1  |
| 9.                 | Village of Udik | East Lampung | Sindang Anom and Mount Agung                  | 2  |
| 10.                | Metro Kibang    | East Lampung | Margo Sari, Marga Jaya and Jaya Asri          | 3  |
| 11.                | Day Bar         | East Lampung | Buana Sakti and Purwodadi Mekar               | 2  |
| NUMBER OF VILLAGES |                 |              |   | 39 |

Source: Forestry Service of Lampung Province, *UPTD Gedong Wani Long Term Forest Management Plan 2014-2023* (Bandar Lampung: KPHP Gedong Wani, 2013), processed.

The working area of the UPTD KPH Gedong Wani includes 39 definitive villages whose territories are in and/or around forest areas. The sub-districts and villages included in the forest area can be seen in Table 2 above. Government policy in transmigration land disputes with forests, the key to solving the transmigration land issue is to synchronize data, especially spatial data for each region. Mapping carried out in forest areas can be used as a basis for forest area confirmation. In the case of transmigration, if the map designates the forest area first, the government must defend it. However, if the land is controlled first, the government must make the release in the manner and stipulations determined.

In line with Presidential Decree No. 88 of 2017 concerning Settlement of Land Tenure in Forest Areas, that the pattern of settlement of land disputes that are controlled and used after the land is designated as a forest area, by: a) parcels of land in forest areas are excluded through changes to forest area boundaries, b) exchange, c) social forestry program by providing access to forest management, d) Residents living in forest areas are moved out of forest areas. In line with the social forestry program in accordance with the Presidential Decree, the government through the Indonesian Minister of Environment and Forestry (LHK) handed over forestry certificates simultaneously in 19 provinces throughout Indonesia. One of them in Lampung Province was handed over 66 Social Forestry Certificates covering 11,309.87 hectares in 6 UPTD KPH, namely: Gedong Wani, Gunung Balak, Tahura Wan Abdul Rahman, Pesawaran, Way Pisang, and Batutegi.<sup>16</sup> The pattern of settlement by providing social forestry certificates must take into account the forest area of at least 30% of the area of river basins, islands and/or provinces; and must take into account the main function of the forest area.<sup>17</sup>

In addition to the settlement of land disputes, there is also a land examination which is regulated in the Head of BPN Regulation No. 12 of 2013 concerning Land Examination. Land examination activities include: 1) research, 2) examination, 3) studies and recommendations, 4) draft decisions for granting, conversion/affirmation/recognition, 5) cancellation of land rights, or 6) designation of abandoned land. Examination of Land as an effort to prevent and guarantee the resolution of land disputes quickly.<sup>18</sup>

Land examination is also supported by policies in the context of overcoming land disputes, conflicts and cases, namely by conducting studies which are regulated in the Head of BPN Regulation No. 3 of 2011 concerning Management of the Study and Handling of Land Cases. This regulation aims to realize a just and prosperous land policy for the community. This assessment and handling is a means of resolving land disputes, conflicts and cases as well as minimizing the potential for land issues to arise.<sup>19</sup>

<sup>16</sup> senator.id, Jokowi Serahkan Sk Kehutanan Lampung Dapat 66 Sk Kehutanan Sosial, November, 9, 2022, <https://senator.id/jokowi-serahkan-sk-kehutanan-lampung-dapat-66-sk-kehutanan-sosial/>

<sup>17</sup> Article 8 Presidential Regulation Number 88 of 2017 Concerning Settlement of Land Tenure in Forest Areas

<sup>18</sup> Article 1 Regulation of the Head of the National Land Agency Number 12 of 2013 Concerning Land Examination

<sup>19</sup> Regulation of the Head of the National Land Agency Number 3 of 2011 concerning Management of the Study and Handling of Land Cases

In its development, settlement of land disputes in national land law is further regulated in Permen ART/BPN 11/2016 concerning Settlement of Land Cases as a substitute for Head of BPN Regulation No. 3 of 2011. In Permen ATR/BPN 11/2016, settlement of land disputes can also be carried out through the initiative of the Minister. The Minister conducts monitoring to find out land disputes or conflicts that occur in an area. Routine monitoring is also carried out by the Head of the Land Office, the Head of the BPN Regional Office or the Director General of complaints or reporting in newspapers. Monitoring results are reported by the Head of the Land Office to the Head of the BPN Regional Office every 4 (four) months with a copy to the Minister. If monitoring results need to be followed up, the Minister or the Head of the BPN Regional Office will order the Head of the Land Office to complete it.<sup>20</sup> Next, Permen ATR/BPN 11/2016 was replaced with Permen ART/BPN 21/2020 concerning Handling and Settlement of Land Cases which also regulates the Handling of Disputes and Conflicts. Handling and settlement is carried out through the following stages: 1) Case study, 2) Initial title, 3) Research, 4) Research results exposure, 5) Coordination Meeting, 6) Final degree, and 7) Case Completion.

Settlement of transmigrant land disputes is carried out based on Presidential Decree no. 88 of 2017, that the solution is by providing access to forest management through social forestry programs<sup>21</sup>. Such dispute resolution is in line with the theory of authority.<sup>22</sup> In relation to forest areas, the party that has the authority to do something in forest areas is the Ministry of Forestry and not the Ministry of Agrarian Affairs/BPN. In addition, such settlement is also in line with the theory of legal certainty that regulations and implementation must be the same.<sup>23</sup> Apart from being in line with the theory of authority and legal certainty, this settlement is also in accordance with the Long Term Forest Management Plan (RPHJP, 2013-2023) of the UPTD Gedong Wani Production Forest Management Unit (KPHP), including the Community Empowerment Program which is manifested in the form of social forestry.

The social forestry certificate issued by the Ministry of Forestry in the framework of completing the transmigrant business land in Purwotani village which is included in Register 40 Gedong Wani when examined from the theory of the legitimacy of government actions, is said to be correct. This is in accordance with the elements of the legitimacy of government actions, namely: aspects of authority, procedure and substance.<sup>24</sup> That the authority lies with the Ministry of Forestry, carried out in accordance with procedures and substance related to social forestry and not the granting of land rights.

So regarding transmigrant business land that is included in the forest area, the settlement is carried out between the Minister of Forestry and the transmigrants. Thus transmigrants do not get property rights over land as previously promised.

## **2. Legal Implications of Land Tenure for Residents of Purwotani Village**

### **a. Lack of Legal Certainty for Warda Desa**

Providing access to land for transmigration is an obligation of the government in order to reduce problems that impact national stability. Granting access to land aims to ensure the welfare of transmigrant residents and provide legal protection for land ownership. In its provisions, general transmigrants are entitled to assistance from the Government and/or regional governments in the form of: a) supplies, transportation, placement in transmigration

<sup>20</sup> Articles 4 and 6 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases

<sup>21</sup> Salim, MN, Sukmo Pinuji, Westi Utami 2018, 'Reforma Agraria di kawasan hutanSungaitohor, Riau: pengelolaan Perhutanan Sosial di wilayah perbatasan', *Bhumi, Jurnal Agrarian dan Pertanahan*, vol. 4, no. 2, Nov. hlm. 164-189

<sup>22</sup> Indroharto, *Asas-Asas Umum Pemerintahan yang Baik*, dalam Paulus Efendie Lotulung, *Himpunan Makalah Asas-Asas Umum Pemerintahan yang Baik*, Bandung: Citra Aditya Bakti, (1994), hlm. 65

<sup>23</sup> Hans Kelsen dalam Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana, Jakarta, (2008), hlm.158

<sup>24</sup> Philipus M. Hadjon, "*Fungsi Normatif Hukum Administrasi Dalam Mewujudkan Pemerintahan yang Bersih*", *Orasi Ilmiah Pengukuhan Guru Besar Ilmu Hukum, Fakultas Hukum Universitas Airlangga, Surabaya*, 10 Oktober 1994, hlm. 7



settlements, b. Property rights over business land, residential land and houses, c. production facilities, d. food security for a certain period of time.<sup>25</sup>

Transmigration, such as general transmigration and self-help transmigration, cannot be separated from the land. Residents who are willing to leave their place/village of origin to become transmigrants in the hope of obtaining a better life<sup>26</sup>. Livelihoods that are more realized by obtaining business land/land, other than residential land. The guarantee for improving the welfare of transmigrant residents is legal certainty over land rights. However, in reality, as happened in Central Lampung, the government has not been able to provide guarantees and legal protection for transmigration.<sup>27</sup> where transmigrant residents are still struggling to get legal certainty of ownership of land rights in accordance with the government's promise when they leave their hometown. They hope to improve their lives in a new place with arable land provided by the government. There are transmigrant residents who have obtained land but do not have a land certificate, there are also residents who have obtained land along with land certificates but their land is claimed by the community.<sup>28</sup>

The residents of Purwotani Village, South Lampung, experienced the same thing, although it was different. They did not get ownership rights to the land, but they were luckier to have obtained business land in the form of social forestry from the Ministry of Forestry.

Legal certainty is the most important part in the realization of legal objectives. As conveyed by Gustav Radbruch, in the "Priority Standard Teachings" stated that there are three basic ideas of law, namely justice, benefit and legal certainty. Justice is the main thing of the three teachings but does not mean that other elements can be ignored. Law is said to be good if it is able to synergize these three elements for the sake of common welfare and prosperity.<sup>29</sup> From the three basic ideas of law, Gustav Radbruch that legal certainty requires law to function as a rule that must be obeyed and implemented in accordance with the norms or content material in the regulation which contains the basic principles of law.<sup>30</sup> The government should have kept its promise in the transmigration program, namely providing land for settlements and business land, but in practice this has not always materialized. The expected legal certainty in the transmigration program was not implemented, especially the guarantee of land ownership rights.

The impact of the legal conflict over the land rights of the transmigration village which is still in dispute status makes the legal guarantees and certainty that have been established by the government questionable. The basis of the conflict is inseparable from the government's inconsistency in carrying out regulations regarding the granting of land rights to transmigrants. Conflicts or friction that occur between local local communities and transmigration communities can be minimized if the government is consistent with the regulations made. One of the principles that must be the basis for guaranteeing legal certainty is *nemo plus juris*. Where this ssas aims to provide legal protection to the actual right holder from all forms of action from

<sup>25</sup> Article 13 Paragraph 1 of the Law of the Republic of Indonesia Number 29 of 2009 concerning Amendments to Law Number 15 of 1997 Concerning Transmigration

<sup>26</sup> Kusdinar, Rika, et al. "Efektivitas Program Transmigrasi Kabupaten Sumedang." *JRPA-Journal of Regional Public Administration* 7.1 (2022): Hlm. 2.

<sup>27</sup> FX. Sumarja, dkk, *Evaluasi Undang-Undang Nomor 15 Tahun 1997 Tentang Ketransmigrasian Kaitannya Dengan Pemberian Sertifikasi Tanah Bagi Para Transmigran*, Kerjasama Pusat Perancangan Kebijakan dan Informasi Hukum Pusat Daerah (Law Center) DPD-RI Dengan Pusat Studi Hukum dan Pembangunan (Pushiban) Fakultas Hukum Universitas Lampung, 2017.

<sup>28</sup> F FX. Sumarja, "Menggapai Tanah Harapan", *Lppm.Unila.*, (2019): 1-12, hlm. 1. Seminar dan Lokakarya Nasional Transformasi Kebijakan Agraria dan Transmigrasi: Quo Vadis Pedesaan di Indonesia" oleh LPPM Unila, 10-11 Juli 2019, 10-11 Juni 2019, Bandar Lampung.

<sup>29</sup> R. Tony Prayogo, "Penerapan Asas Kepastian Hukum Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materiil Dan Dalam Peraturan Mahkamah Konstitusi Nomor 06/Pmk/2005 Tentang Pedoman Beracara Dalam Pengujian Undang-Undang", *Jurnal Legislasi Indonesia* 13 NO. 02 ,(2016): 191 – 202, hlm. 192

<sup>30</sup> *Ibid.* , p. 192

other parties who try or transfer the rights of the original owner without his knowledge.<sup>31</sup> Therefore, transmigrants should immediately be given land rights in accordance with the government's promise, so that they can guarantee legal certainty. Considering that the promised business land was included in Gedong Wani Register 40 and it was not possible to be removed from the area, transmigrants were given access to cultivate forest land with social forestry certificates. Of course there is a difference between social forestry and land rights. Social forestry is only given the right to use forest land without reducing the function of the forest, while land rights give the right to use land rights according to land use and capacity.

Considering that the transmigrants in Purwotani Village did not get land rights and only received social forestry, the status of the lands in the village with social forestry still had the status of a forest area. In other words, the village is in an area and/or around a forest. This village is one of 25,863 villages in and around forest areas recorded by the Ministry of Environment and Forestry (KLHK) in 2019.<sup>32</sup> This data is still the same as the data presented by the Minister of ATR/Head of BPN at the National Seminar to Commemorate 62 Years of UUPA at the Faculty of Law, University of Gadjah Mada on October 15, 2022, that there are 10.2 million poor people spread across 25,863 villages in and or around a forest area where 71.06% of the population depend on land resources for their livelihood.<sup>33</sup>

#### **b. Loss of Sense of Justice for Transmigrants**

Conflicts over land disputes that often occur related to land rights in society include horizontal and vertical conflicts. Of the two, horizontal conflicts often occur where transmigrants are involved in conflicts with fellow transmigrants related to the unclear location of business land. Not infrequently in conflicts over land, transmigrants suffer losses under the pretext of various things, for example, customary land or customary forest/forest land. As a result of these land disputes, transmigrants are vulnerable to losses and do not get justice from the government as the government organ that regulates transmigrant land issues. This is where the real role of the government is present, namely to provide a sense of justice to transmigrants.

Talking about Justice in the law concept is very close to the meaning of legality. It is said to be fair if the regulation applies equally or equally without any legal discrimination given to all cases based on the regulations that must be applied or implemented. The legal legality that is applied to a stipulated regulation has equal or equal implications for all actions carried out based on the principle of the substance of the act itself, in which case the regulation is said to be unfair if the application of the regulation is not applied to the same action in the same place. Different.<sup>34</sup>

Regarding conflicts over land rights disputes that occur in transmigration villages, justice must be impartial, and side with what is right; in this case, the transmigrants who have been promised land for business, should have been fulfilled and not harm the transmigrants. In relation to transmigrants from Purwotani Village, South Lampung, they still need land rights to fulfill business land as their rights. The non-fulfillment of the rights of transmigrants to obtain business land in the form of land rights as a result of the location of the business land in Register 40 Gedong Wani. In order to get justice, people continue to fight and get a response from the government. The government responded with two policies, namely: 1) Determination of the Gedong Wani Model Production Forest Management Unit (KPHP) area through the Decree of

<sup>31</sup> Indri Hadisiswati, "Kepastian Hukum Dan Perlindungan Hukum Hak Atas Tanah", *Ahkam* 2, No 1, (2014): 118-147, Hlm. 140

<sup>32</sup> [mediaindonesia.com](https://mediaindonesia.com), "KLHK Identifikasi Ribuan Desa di Kawasan Hutan, November, 9, 2022. <https://mediaindonesia.com/humaniora/221945/klhk-identifikasi-ribuan-desadi-kawasan-hutan>

<sup>33</sup> National Seminar in Commemoration of 62 Years of UUPA at the Faculty of Law, Gadjah Mada University, 15 October 2022

<sup>34</sup> Hayat, "Keadilan sebagai Prinsip Negara Hukum: Tinjauan Teoretis dalam Konsep Demokrasi", *Padjadjaran Jurnal Ilmu Hukum* 2, No 2 (2015); 389-408, hlm. 329

the Minister of Forestry Number SK. 427/Menhut-II/2011 dated 20 July 2011; 2) Permenhut P.46/Menhut-II/2013 concerning Procedures for Ratifying KPHL/P Long Term Forest Management Plans.

As a follow-up to these two policies, the UPTD KPH Gedong Wani was formed. UPTD KPH Gedong Wani prepares a Long Term Forest Management Unit Management Plan covering aspects of forest management that can guarantee sustainable forest management. The form of the government's response to transmigrants (one of which is transmigrants from Purwotani Village, South Lampung) is community empowerment through social forestry. With social forestry, transmigrants get business land, although the designation and use are limited, which must be in line with the preservation of forest functions. In terms of legal certainty, transmigrant social forestry is different from what it should be (land rights). From the point of view of justice, it is found that the social forestry program has provided portions to transmigrants through their business lands, and to the Ministry of Forestry who have not lost forest areas and their forest functions have been maintained.

### C. Conclusion

1. The government's policy in resolving land disputes over the status of transmigration villages in and around forest areas, particularly in Purwotani Village, is carried out through non-litigation/non-litigation channels. The form of solution is in the form of a social forestry program to fulfill the business land allocated for transmigrants as previously agreed upon. The government has been unable to provide transmigrants with business land in the form of land rights because the land is in a forest area and it is yet to be possible to move land out of a forest area. The policies used in resolving land disputes for transmigration villages located in forest areas mostly use forestry policies.
2. The legal implication for transmigrant villagers who are still in and around the forest area is that they cannot own business land with rights, namely land ownership rights issued by the Ministry of Agrarian Affairs/BPN, but only with social forestry status issued by the Ministry. Forestry.

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